IN THE

Supreme Court of the United States

October Term, 1976

No. 76- **76-296**

BILLY JOE ADCOX
Petitioner

VERSUS

CADDO PARISH SCHOOL BOARD
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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August 27th, 1976

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The petitioner, Billy Joe Adcox, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on April 13, 1976.

OPINIONS BELOW

No opinion was issued by the Court of Appeals; it merely affirmed. As such, a copy thereof appears in the Appendix hereto [A-1]. The ruling of the District Court for the Western District of Louisiana, not yet reported, appears in the Appendix hereto [A-2].

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on April 13, 1976. A timely petition for rehearing *en banc* was denied on June 1, 1976, and this petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

(1) Are racial quotas for employee promotions constitutionally and statutorially permissible? Or put another way, once hirings occur, may promotions thereafter be based upon race instead of merit?

(2) May a white person be removed from an employment position merely to make the same available to a less qualified black person?

STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, Section 1

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 42:

§ 1981. *Equal rights under the law*

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1983. *Civil action for deprivation of rights*

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 2000d. *Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin*

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 2000e-2(a). *Unlawful employment practices—Employer practices*

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

Petitioner, Billy Joe Adcox, is a domiciliary of Shreveport, Caddo Parish, Louisiana. Respondent, Caddo Parish School Board, is a state agency, charged with the responsibility of operating a school system within the Parish at the kindergarten, elementary and high school levels. Among other responsibilities, it is vested with the authority to both hire and promote teachers, including coaches. At its regularly scheduled meeting, as held on March 20, 1974, Respondent, by motion, duly made, seconded and unanimously carried, promoted Petitioner from his then position of assistant coach to one of head coach. Following directions officially made, Petitioner assumed and performed the duties of head coach at the assigned school. His salary was, accordingly, increased and paid. On March 29, 1974, at a special session, this promotion

of Petitioner was rescinded and voided, for no other reason than that he was white and not black.[1] Petitioner filed a complaint with the Federal Court for the Western District of Louisiana, on April 19, 1974, alleging that the actions of Respondent violated his constitutional and civil rights for the following non-exclusive reasons:

"(a) The establishment of a racial quota in the hiring and promotion of teachers in the Caddo Parish public schools violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution.

"(b) The establishment of a racial quota in the hiring and promotion of teachers in the Caddo Parish public schools violates the Civil Rights Act, 42 U.S.C.A. §2000(d) by discriminating against whites and non-blacks.

"(c) By not affording complainant an opportunity to be heard as to why his appointment should not be rescinded, Billy Joe Adcox's due process rights under the Fourteenth Amendment to the Federal Constitution were violated.

"(d) The actions of the Caddo Parish School Board violate the Equal Employment Opportunities Act, 42 U.S.C.A. §2000(e) et seq., by discriminating against whites and non-blacks, in the promotion, hiring and discharge of teachers."

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1. The local bi-racial committee had lodged a complaint with the school board about Petitioner's appointment. The entire minutes of this meeting are set forth in the Appendix, A-3.

He also sought injunctive relief for the purpose of holding the matter in abeyance until a hearing could be held. When no action was taken on his temporary restraining order, he sought and obtained a similar order in the state court on the 30th day of April, 1974. This was promptly set aside by the Federal Court and on the 24th day of May, 1974, the position of head coach was filled by the appointment of another person. This person was black. Five days later, Respondent moved for a summary judgment, which was granted. [Appendix, A-2] On Appeal the matter was affirmed. [Appendix, A-1] As reflected by affidavits and cross-affidavits and the testimony taken, it is not disputed that:

(a) Petitioner was the best qualified of all of the applicants for the position to which he was promoted;

(b) Petitioner was removed from this position solely because he was white and not black; and

(c) After the position was taken away from Petitioner, it was given to a less qualified person solely because he was black so as to satisfy a judicially imposed racial quota.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS CONCERNING THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND THE CIVIL RIGHTS ACTS.

The lower court in granting Respondent's **Motion for Summary Judgment** ruled, "Defendant's Motion is grounded on the fact that absolutely no discrimination was involved

in the treatment of Plaintiff. We agree," [Appendix, A-2]. Yet it is clear that Petitioner, a white, was demoted and removed from his job as head coach at Southwood High School, not because he was incompetent, nor because he wilfully neglected his duty, nor even because he was not qualified [he was, in fact, the most qualified for the position]; but rather solely to make way for the appointment of a black in his place.

The design, spirit, intent and purpose in the enactment of the Fourteenth Amendment to the United States Constitution and the Civil Rights Acts of 1866 and 1964 were to guarantee that all persons, regardless of race, color, creed or place of national origin would be treated equally, and that no person would be disadvantaged as a result thereof.

That groups may have suffered discrimination in the past is no justification for present discrimination against an individual, for it is well settled that the right to equal protection granted by the Fourteenth Amendment is an individual and personal one, not a group right. For example, in *Shelley v. Kraemer*, 334 U.S. 1 (1948), this Court said:

> "The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is, therefore, no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on ground of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."
>
> [At 22]

This Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), under footnote 5 (P. 491), quotes with approval the

following from *Strauder v. West Virginia*, 100 U.S. 303:

> "It ordains that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be same for the black and the white; that *all persons whether colored or white shall stand equal before the laws of the States*. ***"
>
> [Emphasis added]

This Court has repeatedly stated that the equal protection clause of the Fourteenth Amendment is applicable to all races alike. *McLaughlin v. Florida*, 379 U.S. 184 (1964), held that racial classification is "an invidious discrimination forbidden by the equal protection clause" because the guarantee of the "equal protection of the laws" cannot be squared with a system that deprives members of one race of their rights in order to provide "recompense" to members of another. In *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), this Court said:

> "*** Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. *Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed.* What is required by Congress is the removal of artificial, arbitrary and many unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classifications."
>
> [Emphasis added]
>
> [At 430-431]

> "Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins.
>
> "Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality and sex become irrelevant."
>
> [At 436]

As Justice Douglas stated in his opinion in *De Funis, et al. v. Charles Odegaard*, 416 U.S. 312 (1974):

> "There is no constitutional right for any race to be preferred. *** There is no superior person by constitutional standards. A De Funis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability no matter his race or color. Whatever his race, he had a constitutional right to have his application considered on its individual merits in a racially neutral matter. ***"
>
> [At 336, 337]
>
> "*** The key to the problem is consideration of such applications *in a racially neutral way*."
>
> [Emphasis supplied in original opinion]
>
> [At 340]
>
> "*** The equal protection clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. ***"
>
> [At 342]
>
> "*** If discrimination based on race is constitutionally permissible when those who hold the reins can come up with 'compelling' reasons to justify it, then constitutional guarantees acquire an accordianlike quality. *** All races can compete fairly at all professional levels. So far as race is concerned, any state spon-

sored preference to one race over another in that competition is in my view 'invidious' and violative of the equal protection clause. ***"

[At 343]

The decision below also conflicts with the latest holding by this Court relating to job discrimination based on race. In *McDonald, et al. v. Santa Fe Trail Transportation Company, et al.*, U.S. , 44 LW 5067 (1976), this Court unanimously held:

"II

"Title VII of the Civil Rights of 1964 prohibits the discharge of "any individual" because of 'such individual's race,' § 703 (a) (1), 42 U.S.C. § 2000e-2 (a) (1). Its terms are not limited to discrimination against members of any particular race. Thus, although we were not there confronted with racial discrimination against whites, we describe the act in *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1961), as prohibiting '[d]iscriminatory preference for *any* [racial] group, *minority* or *majority*' (emphasis added). Similarly the EEOC, whose interpretations are entitled to great deference, *Griggs v. Duke Power Co.*, 401 U.S. at 433-434, has consistently interpreted Title VII to proscribe racial discrimination in private employment against whites on the same terms as racial discrimination against nonwhites, holding that to proceed otherwise would

" 'constitute a dereliction of the Congressional mandate to eliminate all practices which operate to disadvantage the employment opportunities of any group protected by Title VII, including Caucasians.' EEOC Decision No. 74-31, 7 FEP 1326,

1238, CCH EEOC Decisions ¶6404, p. 4084 (1973).

This conclusion is in accord with uncontradicted legislative history to the effect that Title VII was intended to 'cover all white men and white women and all Americans,' 110 Cong. Rec. 2579 (remarks of Rep. Celler) (1969), and create an 'obligation not to discriminate against whites,' *id.*, at 7218 (memorandum of Sen. Clark). See also *id.*, at 7213 (memorandum of Sens. Clark and Case); *id.*, at 8912 (remarks of Sen. Williams). We therefore hold today that Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they Negroes and Jackson white."

[Footnotes omitted]

[At 5069]

2. THE DECISION BELOW ALSO CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEAL.

The constitutional and statutory permissibility of racial quotas for employment promotions in the public sector was one of the first impression in the Court below. It had previously pretermitted the question with the statement that, "[T]he problems inherent in quota relief assume different parameters in the promotion, rather than hiring, context." *NAACP v. Allen*, 493 F.2d 614, Footnote 12 at 622, (CA 5, 1974). The instant decision conflicts with those of two other circuits. In *Porcelli v. Titus*, 431 F.2d 1254 (CA 3, 1970), cert. den. 402 U.S. 944, the Court held that racial quotas per se may not be used for promotions and in *Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Com.*, 482 F.2d 1333 (CA 2, 1973), later app., 497 F.2d 1113 (CA 2), cert. den. 421 U.S. 991, the Court reversed the lower court and prohibited the use

of racial quotas for promotions. In *Kirkland, et al. v. New York State Department of Correctional Services, et al.*, 520 F.2d 420 (CA 2, 1975), the Court said:

> "So long as civil service remains the constitutionally mandated route to public employment in the State of New York, no one should be 'bumped' from a preferred position on the eligibility list solely because of his race. Unless the Fourteenth Amendment is applicable only to Blacks, this is constitutionally forbidden reverse discrimination."
>
> [At 429]

And in *Chance v. Board of Examiners & Board of Education, etc.*, 534 F.2d 993 (CA 2, 1976), the Court said:

> "Moreover, the concern which we expressed in *Kirkland v. New York State Department of Correctional Services*, 520 F.2d 420 (2d Cir. 1975), about the 'bumping' effect of a quota 'upon a small number of readily identifiable' individuals finds equal cause for expression in the situation which now confronts us. We are advised that in some of the school districts employees will be excessed from groups containing as few as two or three persons. To require a senior, experienced white member of such a group to stand aside and forego the seniority benefits guaranteed him by the New York Education Law and his union contract, solely because a younger, less experienced member is Black or Puerto Rican is constitutionally forbidden reverse discrimination."
>
> [At 998]

In *Patterson v. American Tobacco Co.*, 535 F.2d 257 (CA 4, 1976), the Court held that whether the previous discrimination was race or sex motivated, the remedy is nevertheless the same—"bumping" is specifically prohibited under Title VII and the Fourteenth Amendment. See also *EEOC v. Local 638*, 532 F.2d 821 (CA 2, 1976).

The instant case departs from previous Fifth Circuit cases which relate to job discrimination in the private sector. In *United States v. Jacksonville Terminal Company*, 451 F.2d 418 (CA 5, 1971), the Court held:

> "*** Assuming *arguendo* for the moment that past or present racially discriminatory conduct has occurred, white employees need not suffer displacement, layoff, or furlough merely to satisfy some court-imposed quota or black/white ratio. ***"
>
> [At 437]

See also *Local 189, United Papermak. & Paperwork. v. United States*, 416 F.2d 980 (CA 5, 1969).

By ignoring Petitioner's qualifications and refusing to allow Petitioner to present a prima facie case, the court below departs from its own holding in the *Jacksonville* case, *ante;* conflicts with this Court's holding in *Griggs, ante;* conflicts with the Tenth Circuit's decisions of *Muller v. United States Steel Corporation*, 509 F.2d 923 (CA 10, 1975), and *Rich v. Martin Marietta Corporation*, 522 F.2d 333 (CA 10, 1975); and also conflicts with the Fourth Circuit's decision in *Jones v. Pitt County Board of Education*, 528 F.2d 414 (CA 4, 1975).

3. THE IMPORTANCE OF THE QUESTIONS PRESENTED.

The Petitioner was selected for a promotion in a racially neutral manner. There was no indication, innuendo or insinuation that his unanimous selection was racially motivated, or that he was selected for any reason other than that he was the most qualified individual for the position.

In stark contrast, it is transparently clear and patently obvious that the rescinding of Petitioner's appointment, his

demotion from head coach to assistant coach, the reduction of his salary and his transfer from Southwood High School (where he had assumed and was performing the duties of head coach) to Fair Park High School occurred for the sole reason that he was not black. [See Appendix, A-3.]

It is clear that the action of the Respondent was racially motivated and that Petitioner was subjected to racial discrimination. [See Appendix, A-3.]

Nothing contained in the Desegregation Plan [see Appendix, A-2] relates to objective job-related criteria. It instead focuses solely upon race. Petitioner submits that this lack of objective job-related criteria, and in lieu thereof, the substitution of race as the sole criteria for promotional purposes, is contrary to the spirit and intent of the law.

4. SIMILAR ISSUES AS HERE RAISED ARE PENDING BEFORE THIS COURT ON ANOTHER WRIT APPLICATION.

The issues raised in this case are not dissimilar from those posed by the question presented to this Court in the case of *Kirkland v. New York State Department of Correctional Services*, in a petition for certiorari under Number 75-1631. The similar question there presented is: "Did district court have power to award 'quota' relief or was court of appeals correct in reversing on grounds that it was prohibited by U.S. Constitution, New York State Constitution, and New York Civil Service Law?"

CONCLUSION

Although as a result of the action by the Fifth Circuit, this case may be without precedential value at this time, the issues here are important to Petitioner. They are also of compelling, overriding and paramount importance to the public as well, for the courts below are confronted with these unresolved perplexing problems concerning reverse discrimination in matters of race and sex on almost a daily basis.

The Constitution guaranteed Petitioner that no citizen or class of citizens regardless of race would have special privileges or immunities which on the same terms did not belong to him. The ruling below violates, conflicts with, and vitiates this fundamental guarantee.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT G. PUGH
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Bank Building
Shreveport, Louisiana 71101

Counsel for Petitioner

August 27th, 1976

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 74-4153

BILLY JOE ADCOX,
Plaintiff-Appellant,

versus

CADDO PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

(April 13, 1976)

Before Gewin, Godbold and Simpson,
Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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1. See N.L.R.B. v. Amalgamated Clothing Workers of America, 1970, 430 F.2d 966.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION
NO. 74-405

BILLY JOE ADCOX
versus
CADDO PARISH SCHOOL BOARD, ET AL

FOR PLAINTIFF	MESSRS. ROBERT G. PUGH Pugh & Nelson 720 Commercial National Bank Bldg. Shreveport, Louisiana 71101
FOR DEFENDANTS	JOHN R. PLEASANT Booth, Lockard, Jack, Pleasant & LeSage P. O. Box 1092 Shreveport, Louisiana 71161
FOR PLAINTIFF-INTERVENOR	Donald E. Walter United States Attorney Robert H. Shemwell Assistant United States Attorney P. O. Box 33 Shreveport, Louisiana 71161

SCOTT, JUDGE:

RULING

Billy Joe Adcox brings this civil rights suit praying for reinstatement as Head Coach of Southwood High School, Shreveport, Caddo Parish, Louisiana, and for other equitable relief. Defendant, Caddo Parish School Board, has filed a Motion for Summary Judgment.

According to the affidavit of Dr. Earl A. McKenzie, Acting Superintendent of the Caddo Parish School Board and Secretary of the Caddo Parish School Board, there are ten high schools in Caddo Parish and a Head Coach is assigned to each one. Prior to March 20, 1974, there were five Head Coaches who were white and three who were black. Minutes of the Board reflect the appointment of two additional white Head Coaches on March 20, 1974, making a total of seven white Head Coaches and three blacks. On March 22, 1974, the Citizens Advisory Committee (Bi-Racial Committee) advised the Board that, in their opinion, the appointment contravened the desegregation Order of this Court, dated July 20, 1973.[1] On March 29, 1974, the School Board convened for a special meeting at which time the March 20th appointments of plaintiff Adcox and the other white coach were rescinded. On April 3, 1974 the Board met as regularly scheduled and held discussion on new appointments but no official action was taken. On May 24, 1974, the Board appointed two blacks to fill the Head Coach vacancies bringing the total to five white and five black.

Defendant's Motion is grounded on the fact that absolutely no discrimination was involved in the treatment of plaintiff. We agree. The appointment of the two black Head Coaches on May 24, 1974 was in furtherance of this Court's Order of July 20, 1973. It is clear and unequivocal, that had the Board done otherwise, it would have subjected itself to penalties for contempt of court. Accordingly, defendant's Motion for Summary Judgment is granted.

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1. The pertinent parts of that Order provide "II. *General Provisions.* ****2. As a general goal, it is stipulated that a 50-50 ratio of black to white administrators, staff, and teachers shall be attained within three years. This ratio reflects the current ratio of black to white pupils in the system. This transition shall be carried out by utilizing the opportunities which occur as a result of normal attrition, and no personnel shall be discharged or transferred by reason of this provision.

* * *

IV. Plan for Desegregation of Staff. 'Staff' shall be defined to be all principals, assistant principals, teachers, teacher-aides and other staff working directly with children at any school, whether regular or special part-time. In carrying out the general provision regarding a 50-50 black to white ratio, each category of staff such as 'Principals', 'Assistant Principals', 'Head Coaches', 'Assistant Coaches', 'Teachers', 'Counselors', 'Band Directors', 'Choir Directors', 'Teacher-Aides', etc., shall be considered as subject to the provision. Additionally, a black to white ratio of the total of staff personnel in each school shall reflect a 50-50 black to white ratio. While it may be impracticable or even impossible to attain an exact 50-50 ratio in each of these categories at a particular school, in no case shall a racial percentage of total staff or of teachers at any school be greater than sixty percent (60%) nor less than forty percent (40%). It is anticipated that the general goal prescribed will be more difficult to reach in those staff categories with fewer members and, for this reason, special care should be taken that vacancies occuring in these categories be used to bring about a strongly positive progression toward the goal."

Defendant should submit a judgment for execution within ten (10) days.

THUS DONE AND SIGNED in Chambers, at Alexandria, Louisiana, on this 6th day of November, 1974.

S/Nauman S. Scott
UNITED STATES DISTRICT JUDGE

March 29, 1974

The Caddo Parish School Board met in special session in its offices at 1961 Midway Street, Shreveport, Louisiana, at 12 noon, Friday, March 29, 1974 with President King presiding and the following members present, being a quorum: Raymond T. Boswell, Mrs. Betty Bullock, Claude A. Dance, Jr., Henry V. Delony, Joseph D. Garner, Paul Hellinghausen, George P. Hendrix, Mrs. Peggy R. Lagersen, Johnny C. McFerren, J. Ray Pruitt, Percy A. Sharp, III, Mrs. Mary Abbie Shuey, Mrs. Corinne C. Taylor, Arthur G. Thompson, Jack P. Timmons, Mrs. Harriette H. Turner, and W. N. Wynn. Also present were Earl A. McKenzie, Secretary, and John R. Pleasant, Legal Counsel.

VISITORS

Mr. Alphonse Jackson addressed the board urging compliance of the court order that was accepted by the board.

Mr. Lonnie Sibley, on behalf of a group of parents from the Northwood area, presented a petition to the board requesting that the school board sustain Mr. Burton's appointment as head coach at Northwood High School.

Shell Stephenson and Archie Smith addressed the board in support of Mr. Burton as head coach at Northwood High School.

Mr. Jack Serpas, on behalf of a group of parents from the Southwood area, spoke to the board to request that Mr. Adcox be retained as head coach at Southwood High School.

Coaching Appointments. Mr. Hendrix stated that on March 20, 1974, the Caddo Parish School Board appointed two head coaches, Billy Joe Adcox and David Gerald Burton at Southwood and Northwood High Schools, respectively. He moved to void the appointments and that the superintendent submit the names of two blacks for head coaches at Southwood and Northwood by April 3, 1974. Seconded by Mrs. Taylor.

Mr. Timmons amended the motion to delete from the motion the voiding of the appointment of David Gerald Burton at Northwood and submit a proposal for Mr. Burton as head coach at Northwood and another person to be named by the superintendent to fill the other position. Seconded by Mrs. Lagersen. Mr. Delony called for point of order and the president ruled the motion out of order since Mr. Hendrix had previously voted negatively on the issue.

Mr. Hendrix moved that the board reconsider board action of March 20, 1974 on the appointment of the head coaches. Seconded by Mrs. Taylor. Mr. Timmons amended the motion to delete Gerald Burton from the reconsideration. Mr. King stated that a motion to reconsider is not amendable. After considerable discussion, a roll call vote was requested on the motion to reconsider the appointment.

AYE: Raymond T. Boswell, Claude A. Dance, Jr., Paul Hellinghausen, George P. Hendrix, Robert E. King, Mrs. Peggy R. Lagersen, J. Ray Pruitt, Mrs. Mary A. Shuey, Mrs. Corinne C. Taylor, Arthur G. Thompson, Jack P. Timmons, and Mrs. Harriette H. Turner

NAY: Mrs. Betty Bullock, Henry V. Delony, Joseph D. Garner, Johnny McFerren, Percy A. Sharp, III, and W. N. Wynn

The motion was carried.

Mr. Timmons moved that the appointment of Gerald Burton be sustained. Seconded by Dr. Wynn. After considerable discussion, Dr. Garner amended the motion that Mr. Adcox also be included as being excluded from consideration in this motion. Seconded by Mr. McFerren. Mr. Thompson called for point of order. He stated that originally the board voted to reconsider the appointment and the effect of the motion and amendment is to undo this motion. After discussion, roll call vote was requested on Dr. Garner's amendment.

AYE: Mrs. Betty Bullock, Claude A. Dance, Jr., Henry V. Delony, Joseph D. Garner, Johnny McFerren, and Percy A. Sharpe, III

NAY: Raymond T. Boswell, Paul Hellinghausen, George P. Hendrix, Robert E. King, Mrs. Peggy R. Lagersen, J. Ray Pruitt, Mrs. Mary Abbie Shuey, Mrs. Corinne C. Taylor, Arthur G. Thompson, Jack P. Timmons, Mrs. Harriette H. Turner and W. N. Wynn

The amendment failed.

Mr. Hellinghausen asked Mr. Timmons if the intent of his motion, should it pass, would be to take it back to the Citizen's Advisory Committee. Mr. Timmons stated that he believed that this board cannot sustain the two appointments that were made at the last meeting and would recommend a proposal that one of these positions be filled with a black and to sustain the appointment of Mr. Burton to submit to the Citizen's Advisory Committee for their consideration.

After discussion, Mr. Delony made a substitute motion to rescind the two appointments and appoint the two best qualified black coaches. Seconded by Mr. Hendrix. After discussion, Mr. Hendrix called for question on the substitute motion. Roll call vote was requested.

AYE: Raymond T. Boswell, Henry V. Delony, George P. Hendrix, Robert E. King, Mrs. Corinne C. Taylor, Arthur G. Thompson, and Mrs. Harriette H. Turner

NAY: Mrs. Betty Bullock, Claude A. Dance, Jr., Joseph D. Garner, Paul Hellinghausen, Mrs. Peggy R. Lagersen, Johnny McFerren, J. Ray Pruitt, Percy A. Sharp, III, Mrs. Mary Abbie Shuey, Jack P. Timmons, and W. N. Wynn

The motion failed.

Mr. Sharp called for question on the original motion to exclude from the reconsideration the appointment of the head coach at Northwood. Roll call vote was requested.

AYE: Paul Hellinghausen, Mrs. Peggy R. Lagersen, J. Ray Pruitt, Percy A. Sharp, III, Mrs. Mary Abbie Shuey, Mrs. Corinne C. Taylor, Jack P. Timmons, and W. N. Wynn

NAY: Raymond T. Boswell, Mrs. Betty Bullock, Claude A. Dance, Jr., Henry V. Delony, Joseph D. Garner, George P. Hendrix, Robert E. King, Johnny McFerren, Arthur Thompson, and Mrs. Harriette H. Turner

The motion failed.

Mr. Thompson moved that the superintendent be directed to submit and make recommendations to the board for the positions of head coach at Northwood and Southwood High Schools in compliance with the court order as interpreted by the Citizens' Advisory Committee. Motion was seconded. Mr. Thompson withdrew his motion.

Mr. Thompson moved that the appointments made by the board at its last meeting by the filling of the head coaching positions at Northwood and Southwood High Schools be annulled and that the superintendent be directed to submit recommendations to the board in keeping with the court order under which this board operates and the interpretations of that order by the Citizen's Advisory Committee. Seconded by Mrs. Taylor.

Mr. Hellinghausen moved that the board meet in executive session to discuss with the superintendent personnel matters and will reconvene by 1:50 P.M. Seconded by Mr. Hendrix. Motion carried. The board was called into executive session at approximately 1:15 P.M. and reconvened in public session at approximately 1:50 P.M.

Mr. Thompson moved that the board rescind and void the appointments of Gerald Burton as head coach at Northwood and Billy Joe Adcox as head coach at Southwood, that the superintendent of the Caddo Parish School Board be directed to submit to the board his recommendations for head coaches on the above referenced two high schools, and that the two names of the recommendations submitted by him be in keeping with the court order as interpreted by the Citizen's Advisory Committee. Seconded by Mrs. Taylor. Mrs. Shuey requested a roll call vote.

AYE: Raymond T. Boswell, Mrs. Betty Bullock, Paul Hellinghausen, George P. Hendrix, Robert E. King, Mrs. Corinne C. Taylor, Arthur G. Thompson, and Mrs. Harriette H. Turner

NAY: Claude A. Dance, Jr., Henry V. Delony, Joseph D. Garner, Mrs. Peggy R. Lagersen, Johnny McFerren, J. Ray Pruitt, Percy A. Sharpe, III, and Mrs. Mary Abbie Shuey, Jack P. Timmons, and W. N. Wynn

The motion failed.

Mr. McFerren moved that the board adjourn. Seconded by Mr. Delony. The motion failed.

Mr. Thompson moved that the board rescind and void the appointment of Mr. Burton as head coach at Northwood and the appointment of Mr. Adcox as head coach at Southwood. Seconded by Mrs. Taylor. Mrs. Lagersen amended the motion that we consider these appointments separately. Seconded by Mrs. Shuey. Motion was withdrawn by Mr. Thompson.

Mr. Thompson moved that the board rescind and void the appointment of Billy Joe Adcox as head coach at Southwood High School. Seconded by Mrs. Shuey. Roll call vote was requested.

AYE: Raymond T. Boswell, Paul Hellinghausen, George P. Hendrix, Robert E. King, Mrs. Peggy Lagersen, J. Ray Pruitt, Mrs. Mary Abbie Shuey, Mrs. Corinne C. Taylor, Arthur G. Thompson, Jack P. Timmons, Mrs. Harriette H. Turner, and W. N. Wynn

NAY: Mrs. Betty Bullock, Claude A. Dance Jr., Henry V. Delony, Joseph D. Garner, Johnny McFerren, and Percy A. Sharp, III

The motion carried.

Mr. Thompson moved that the board rescind the appointment of David Gerald Burton as head coach at Northwood High School. Seconded by Mrs. Taylor. Roll call vote was requested.

AYE: Raymond T. Boswell, Mrs. Betty Bullock, Henry V. Delony, Joseph D. Garner, George P. Hendrix, Johnny McFerren, Mrs. Corinne C. Taylor, Arthur G. Thompson, and Mrs. Harriette H. Turner

NAY: Claude A. Dance, Jr., Paul Hellinghausen, Mrs. Peggy Lagersen, J. Ray Pruitt, Percy A. Sharp, III, and Mrs. Mary Abbie Shuey, Jack P. Timmons, and W. N. Wynn

ABSTAIN: Robert E. King

The motion was carried.

Mr. Thompson moved that the superintendent be directed to bring to the board his recommendations for head coaches for Northwood and Southwood High Schools and that the persons recommended by the superintendent be black. Seconded by Mr. Hendrix.

Mr. Dance amended the motion that at this time the board refer to the Administrative Committee the plan proposed by Dr. Garner to realign the head coaches in all schools where we will have a head coach for each sport in each school and appoint an athletic director. Seconded by Dr. Garner.

Mr. Thompson amended the amendment that the study be referred to the Finance Committee rather than the Administrative Committee because of the cost to the board on such a plan. Seconded by Mrs. Lagersen.

Mr. Sharp stated that this action would require a lot of study by the Finance Committee and the Administrative Committee on this drastic change in the program. He further stated it is quite apparent from hours of discussion and executive committee meetings that this board cannot reach a decision at this time and recommended that the chair entertain a motion to adjoin. Motion was made and seconded for adjournment. Motion carried.

There being no further business, the meeting adjourned at approximately 2:10 P.M.

/s/ Earl A. McKenzie
Earl A. McKenzie, Secretary

/s/ Robert E. King
Robert E. King, President

IN THE

Supreme Court of the United States

October Term, 1976

NO. 76-296

BILLY JOE ADCOX
Petitioner

VERSUS

CADDO PARISH SCHOOL BOARD
Respondent

RESPONSE OF CADDO PARISH SCHOOL BOARD TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Area Code 318 222-2333

COUNSEL FOR RESPONDENT

October 29, 1976

INDEX

CITATIONS

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STATEMENT OF THE CASE

The statement of the case as outlined in the petitioner's brief beginning on page 4 is correct to the extent stated, but it omits many undisputed facts which need to be considered for an understanding and a correct resolution of the issues presented in this petition.

After years of litigation in *Jones, et al vs. Caddo Parish School Board, et al,* United States District Judge Nauman S. Scott appointed a Citizens Committee in early 1973 to present a plan for the desegregation of the Caddo Parish school system. This committee was composed of five white and five black members, all outstanding business and professional men and women. After many public and private meetings, a plan was unanimously adopted and presented to the Court on June 1, 1973. This plan was accepted by all parties to the litigation, including the United States, who was an intervenor. The plan was adopted and made the judgment of the court. [See Appendix A (excerpts from plan approved by the Court).]

The Caddo Parish School Board has followed the plan and now contends that a unitary school system has been established in Caddo Parish.

The Caddo Parish School Board has never adopted a promotion plan based on seniority or other qualification for the assignment of teachers to additional duties involving coaching positions either as an assistant or head coach. On August 9, 1967, it did adopt a policy, which is still in effect, for the superintendent to recommend such assignments and for approval by the board. [Appendix B (Affidavit of Superintendent filed in District Court and made a part of the Appendix in the Court of Appeals).] The Superintendent did not recommend the assignment of Mr. Adcox to be a head coach. [Appendix B, page 18.]

The plan to desegregate the Caddo Parish school system submitted to the Court, accepted by all parties to the pending litigation and made the judgment of the Court provides for

a general goal of a 50-50 ratio of black-to-white administrators, staff and teachers within three years.

When the Board, without the recommendation of the Superintendent, appointed petitioner and one other white to head coaching positions on March 20, 1974, there were five head coaches who were white and three who were black. With these two assignments, the ratio moved to seven white and three black. This result was contrary to the letter and intent of the Court Order and was by a very divided Board.

The Board recognized its error and just a few days later rescinded the two appointments. It then followed the procedures which it had adopted in 1967 and also in compliance with the Court Order it assigned two black teachers to these positions. With this action the provisions of the Court Order were fully complied with and the ratio in this category became 50-50 for the senior high schools in Caddo Parish. [Appendix B.]

ARGUMENT

The major thrust of petitioner's argument relates to the claim that the right of the petitioner to promotion has been denied. Several citations are contained in the brief in support of this position. The petitioner's error is obvious. There is no evidence whatever in the record to indicate that the Caddo Parish school system had any system of promotions based on seniority as an assistant or on any other classification so as to entitle any particular teacher, black or white, to be appointed as head coach. As a matter of fact, there was nothing to have prevented the Caddo Parish School Board from going

outside the system to employ a teacher and head football coach to fill the vacant position.

It is conceded that Mr. Adcox has been with the Caddo Parish school system for the necessary period to acquire tenure as a teacher. He continues to be employed as a teacher with the additional assignment as an assistant coach, and no proceedings have been instituted nor are any contemplated which would attempt to remove him as a tenured teacher.

Mr. Adcox was illegally assigned duties as a head coach. The assignment was contrary to the order of the United States District Court and the policies of the Caddo Parish School Board in that he was not recommended to the Board by its superintendent.

The Louisiana law provides for the assignment of teachers to additional duties with additional salaries. LSA-R.S. 17:422 provides in part:

> "Nothing contained in R.S. 17:421 shall prevent parish or city school boards from providing additional compensation or increased increments for special teachers, such as principals, . . . coaches, . . . music teachers, or any other teachers . . ."

R.S. 17:421 is the statute fixing the minimum salary schedule for teachers in the Louisiana public schools.

Thus if Mr. Adcox had been properly and legally assigned duties as a head coach, and had been relieved of those duties, he would not have lost tenure as a teacher. He would merely have been relieved of some duties and the extra compensation that would have been paid. However, he will continue as a teacher in the Caddo Parish Schools.

1. THERE IS NO CONFLICT WITH THE DECISIONS OF THIS COURT ON THE ISSUES INVOLVED.

This Court has long recognized that faculty and staff desegregation is a goal to be achieved in the establishment of a unitary school system.

In *U. S. vs. Montgomery County Board of Education*, 395 U. S. 225, 23 L. Ed. 2d 263, at page 270, this Court said:

> "The dispute in this action centers only on that part of the 1968 order which deals with faculty and staff desegregation, a goal that we have recognized to be an important aspect of the basic task of achieving a public school system wholly free from racial discrimination."

The Court reaffirmed the *Montgomery* decision in *Swann vs. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 28 L. Ed. 2d 554, at page 568, when it said:

> "In the companion Davis case, the Mobile school board has argued that the Constitution requires that teachers be assigned on a 'color blind' basis. It also argues that the Constitution prohibits district courts from using their equity power to order assignment of teachers to achieve a particular degree of faculty desegregation. WE REJECT THAT CONTENTION." (Emphasis ours)

In *Bradley vs. School Board, City of Richmond*, 382 U. S. 103, 86 S. Ct. 224, 15 L. Ed. 2d 187, the Court ruled that the Fourth Circuit Court of Appeals should have remanded the case for hearings regarding the contention that racial assignments of staff affected the rights of pupils.

In *Swann, supra*, this Court expressly rejected the contention that the Civil Rights Act of 1964 limited the powers of federal district courts. The Court said:

> "In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system."
>
> * * * * *
>
> ". . . . nothing in the Act which provides us material assistance in answering the question of remedy for state-imposed segregation." p. 567

Petitioner cites *McDonald, et al vs. Santa Fe Trail Transportation Company, et al*, 44 LW 5067 (1976), in support of the contention that the decision of the Court below conflicts with the decisions of this Court. The cited case is certainly not applicable to the present issue. The Court held in *McDonald* that Title VII of the Civil Rights Act of 1964 prohibits the discharge of an employee because of the employee's race and also that racial discrimination in private employment is prohibited against white persons as well as non-whites.

The respondent has not discriminated against petitioner. His assignment was not rescinded because of race. It was because the Board had erred and its action required a rescission. He simply could not be legally assigned to the duties of head coach in defiance of the Court Order for the desegregation of the Caddo Parish school system. His assignment as head coach was made in error by the Board. It was not only contrary to its own policy but contrary to a Court Order binding it to desegregate its faculties. The rescission of this action by the Board was required.

If petitioner's petition is correct, a recalcitrant school board could simply evade a desegregation court order like that in the present case by appointing all whites to positions and then tell the Court that it could not change their assignment under Title VII of the Civil Rights Act. This position would simply be untenable.

It is therefore submitted that the cases cited by petitioner in support of his contention that the decision of the Court of Appeals, Fifth Circuit, in this case is in conflict with the decisions of this Court do not support that position. The quotes from the dissenting opinion of Justice Douglas in *DeFunis, et al vs. Odegaard*, 416 U. S. 312 (1974), are also inapplicable to the issues presented in this case.

1. THE DECISION OF THE FIFTH CIRCUIT COURT OF APPEALS IN THIS CASE IS NOT IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS.

Respondent submits that the citatons contained in petitioner's brief do not support the claim that the decision of the Fifth Circuit conflicts with decisions in two other circuits.

In the case of *Porcelli vs. Titus*, 431 F. 2d 1254 (3rd Circ. 1970), the school board by resolution abolished a former list for appointment of principals and vice-principals and adopted a recommendation by the superintendent providing a list of 35 white and 20 Negro appointments. The formr list had only one Negro for each. The system had 72 principals, none of whom were black. There were 67 vice-principals and

four were black. The District Court dismissed the suit of the white principals. The Circuit Court affirmed and in part said:

> "With this contention we do not agree. State action based partly on considerations of color, when color is not used per se, and in furtherance of a proper governmental objective, is not necessarily a violation of the Fourteenth Amendment. Proper integration of faculties is as important as proper integration of schools themselves, as set forth in Brown v. Board of Education, 349 U. S. 294, 295, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), the thrust of which extends to the selection of faculties. . . . Every predominantly Negro school should have, wherever possible, substantially as integrated a faculty as the predominantly white school."

* * * * *

> ". . . . Further, in United States v. Jefferson County Board of Education, 372 F. 2d 836, 895 (5 Cir. 1966), it was stated, 'As to faculty, we have found that school authorities have an affirmative duty to break up the historical pattern of segregated faculties, the hall-mark of the dual system.' " p. 1257

Petitioner cites two cases from the Second Circuit Court of Appeals, viz: *Kirkland vs. New York State Department of Correctional Services*, 520 F. 2d 420; and *Chance vs. Board of Examiners and Board of Education of the City of New York*, 534 F. 2d 993 (1976). Both of these decisions were rendered by Circuit Judge Van Graafeiland. These cases deal with the validity of an "excessing process" for supervisory personnel in *Chance* and a "bumping" effect with quota systems in *Kirkland*. The Courts recognized that the Civil Rights Act and Title VII was not intended to invalidate bona

fide seniority systems. The Court in *Chance* recognized that a senior white member of a group of education employees could not be required to step aside and forego benefits guaranteed by state law and union contract simply because a younger or less experienced member was black or Puerto Rican.

The Court in *Chance* cited *Watkins vs. Steel Workers Local No. 2369*, 516 F. 2d 41 (5th Cir. 1975); and *Local 189, United Papermakers vs. United States*, 416 F. 2d 980, 994 (5th Cir.), cert. denied 397 U. S. 919, 90 S. Ct. 926, 25 L. Ed. 2d 100 (1970), in support of its decision.

Thus, it would appear obvious that the issue in the case now before the Court is not related to the decisions in the cited cases. The Fifth Circuit is not in conflict with those two decisions and certainly not in conflict with the decision in the present case. In *Chance*, the Court quoted from the Fifth Circuit in *Watkins, supra*, as follows:

> ". . . . Our brothers in the Fifth Circuit say that 'regardless of what that history may show as to Congressional intent concerning the validity of seniority systems as applied to persons who have themselves suffered from discrimination, there was an express intent to preserve contractual rights of seniority as between whites and persons who had not suffered any effects of discrimination.' *Watkins, supra*, 516 F. 2d at 48."

* * * * *

> ". . . . we agree with the court in *Waters* that 'having passed scrutiny under the substantive requirements of Title VII, the employment seniority system . . . is not violative of 42 U.S.C. § 1981.' *Waters, supra*, 502 F. 2d at 1320, n. 4." p. 998

In the case now before the Court Mr. Adcox had no seniority position at the time of the Court Order. He was fully protected in the position he occupied at the time by the Order of the District Court and also by the tenure laws of the State of Louisiana.

Petitioner also cites *Bridgeport Guardians, Inc. vs. Members of Bridgeport Civil Service Com.*, 482 F. 2d 1333 (CA 2, 1973). The Court in the cited case recognized that a district court has wide discretionary powers to prohibit discrimination and to eradicate the effects of past discrimination.

This is what has been done by the Court in this case by the order of July 20, 1973, with the consent of all parties involved in the litigation. If this relief is accomplished by that Order, it follows that the respondent, Caddo Parish School Board, could not disregard the plan to eradicate past discrimination by assigning petitioner to a position in contravention of the Order. The Board's action in assigning Mr. Adcox had to be set aside either voluntarily or by action of the Court. In this case the respondent has voluntarily corrected its error, by rescinding its assignment of Mr. Adcox.

The petitioner also cites *Patterson vs. American Tobacco Co.*, 535 F. 2d 257 (1976), 4 CA, in support of his application. This case also points out the error in the position taken by petitioner. If Mr. Adcox had been occupying the position of teacher and head coach at the time of the Court Order and the Board had removed him in order to achieve a 50-50 ratio, the citation of *Patterson* and the other cases would have been appropriate. In *Patterson* the Court recognized the correctness of imposing quotas to remedy past discrimination in the matter of employment under Title VII of the Civil Rights Act. The Court said.:

> "Finally, the district court ordered that vacancies in the assistant foreman, foreman, and office supervisory positions must be filled with qualified blacks and women, except when none can be found, until the percentage of these classes of workers in the Richmond Standard Metropolitan Statistical Area (SMSA)...."
>
> * * * * *
>
> "Uniformly, however, Title VII has been construed to authorize district courts to grant preferential relief as a remedy for unlawful discrimination...." p. 273

We again say that a disregard of the Court's Order in such a case could be set aside by the Court or it could be done voluntarily. The Caddo Parish School Board did the latter.

The application for a writ of certiorari should be denied.

Respectfully submitted,

Henry A. Politz

HENRY A. POLITZ
1004 Mid South Towers
P. O. Drawer 1092
Shreveport, Louisiana 71163

Counsel for Respondent

October 29, 1976

CERTIFICATE OF SERVICE

I hereby certify that three copies of the brief submitted by respondent have been served on counsel of record for petitioner, Mr. Robert G. Pugh, 555 Commercial National Bank Building, Shreveport, Louisiana 71101, by depositing the same in a United States mail box, with first class postage prepaid.

Henry G. Politz
HENRY G. POLITZ
Attorney for Respondent

October 29, 1976

APPENDIX A

Desegregation Plan Submitted by
Court-Appointed Committee

I. INTRODUCTION

The Committee herewith submits to the Court its plan for further desegregation of the schools in the Caddo Parish School District. This plan contemplates full resolution of the Plaintiffs' claims in their petitions of February 25, 1972 and March 6, 1972 and upon approval by the Court will bring about the conversion of the school district to a unitary school system.

* * * * *

II. GENERAL PROVISIONS

1. The following proposals, in toto, constitute the committee's plan for desegregation of the Caddo Parish School District. As a resolution of the problem facing this community, the plan has been formulated by taking into consideration the rights, needs and desires of all segments of the community and would not be suitable for adoption in part.

2. As a general goal, it is stipulated that a 50-50 ratio of black to white administrators, staff, and teachers shall be attained within three years. This ratio reflects the current ratio of black to white pupils in the system. This transition shall be carried out by utilizing the opportunities which occur as a result of normal attrition, and no personnel shall be discharged or transferred by reason of this provision.

3. A Citizens Advisory Committee shall be established to assist in the implementation of the plan. This commit-

tee shall consist of twelve members to be appointed by the Court. The membership shall be divided equally between blacks and whites and its chairman shall be elected by its members. The committee should meet at least once each month to hear suggestions and complaints about the implementation of this plan and shall advise the School Board of any matters which it feels should be brought to its attention.

* * * * * *

IV. PLAN FOR DESEGREGATION OF STAFF

"Staff" shall be defined to be all principals, assistant principals, teachers, teacher-aides and other staff working directly with children at any school, whether regular or special part-time. In carrying out the general provision regarding a 50-50 black to white ratio, each category of staff such as "Principals", "Assistant Principals", "Head Coaches", "Assistant Coaches", "Teachers", "Counselors", "Band Directors", "Choir Directors", "Teacher-Aides", etc., shall be considered as subject to the provision. Additionally, the black to white ratio of the total of staff personnel at each school shall reflect a 50-50 black to white ratio. While it may be impracticable or even impossible to attain an exact 50-50 ratio in each of these categories at a particular school, in no case shall a racial percentage of total staff or of teachers at any school be greater than sixty per cent (60%) nor less than forty per cent (40%).

It is anticipated that the general goal prescribed will be more difficult to reach in those staff categories with fewer members and, for this reason, special care should be taken

that vacancies occurring in these categories be used to bring about a strongly positive progression toward the goal. In the case of the largest group, the teachers, it is recognized that while continual progress must be shown, this group may require the longest time for attainment of the goal within the specified three year period.

* * * * * *

APPENDIX B

Affidavits of Dr. Earl A. McKenzie,
Superintendent, Caddo Parish Schools

STATE OF LOUISIANA
PARISH OF CADDO

BEFORE ME, the undersigned authority, personally came and appeared DR. EARL A. McKENZIE, who, after being first duly sworn, did depose and say:

That he is duly qualified and acting Superintendent of the Caddo Parish Schools and Secretary of the Caddo Parish School Board.

There are ten high schools in Caddo Parish. A "head coach" is assigned to each high school. As of March 20, 1974, there were five head coaches who were white and three who were black. After the appointments made by the Board on March 20, 1974, there were seven white head coaches and three black head coaches. After the rescinding of the appointments made on March 20, 1974, and the appointments

made by the Board on May 24, 1974, the ratio of black-to-white head coaches became 50-50.

Affiant attaches to this affidavit the minutes of the Caddo Parish School Board covering the regular meeting of March 20, 1974, a special meeting of March 29, 1974, a regular meeting of April 3, 1974, and a special meeting of May 24, 1974.

The minutes attached to this affidavit reflect that the Caddo Parish School Board did on March 20, 1974, appoint Mr. Billy Joe Adcox head coach of Southwood High School. The minutes further reflect that at a special meeting on March 29, 1974, this appointment was rescinded by the Board.

The minutes of April 3, 1974, reflect that there were discussions and motions made by members of the Board relative to the vacancy in this position, but no official action was taken by the Caddo Parish School Board.

On May 24, 1974, the Caddo Parish School Board appointed Robert L. Burton, a black, as head coach of Southwood High School. With this appointment and one other made on the same date, the white-to-black ratio in the position of head coaches became 50-50.

Affiant further declares that the minutes attached to this affidavit are true and correct minutes and reflect the actions of the Caddo Parish School Board at the meetings referred to therein.

/s/Earl A. McKenzie

SWORN TO AND SUBSCRIBED before me, Notary, on this 30 day of May, 1974.

/s/John R. Pleasant
Notary Public

STATE OF LOUISIANA
PARISH OF CADDO

BEFORE ME, The undersigned authority, personally came and appeared DR. EARL A. McKENZIE, who, after being first duly sworn, did depose and say:

That he is duly qualified and acting Superintendent of the Caddo Parish Schools and Secretary of the Caddo Parish School Board.

Affiant supplements the affidavit executed on May 30, 1974, designated as Exhibit "B" and attached to a motion for summary judgment filed by the Caddo Parish School Board.

The plaintiff, Billy Joe Adcox, began teaching in Caddo Parish in 1960 at Woodlawn High School with the additional duties of an assistant coach.

He was later transferred to Fair Park High School and in February, 1969, was appointed as Head Coach. On August 15, 1973, he resigned his position as Head Coach and was then assigned as an Assistant Coach.

On March 20, 1974, the Caddo Parish School Board appointed Mr. Adcox as Head Coach at Southwood High

School. The effective date of this appointment was March 25, 1974.

On March 29, 1974, or four days later, the Caddo Parish School Board rescinded this appointment and he was reassigned as a teacher and Assistant Coach at Fair Park High School.

Affiant did not recommend to the Caddo Parish School Board that Mr. Adcox be appointed as Head Coach at Southwood High School. The minutes of the meeting recite that:

> "The Superintendent stated that he had two coaching vacancies and at this time he had no recommendations. . . ."

The minutes further show that the appointment was made on Motion of a Board member and approved by vote of the Board.

The following policy was adopted by the Caddo Parish School Board on the 9th day of August, 1967:

> ". . . . The Superintendent in the future be required to submit recommendations for approval by the Board of assistant principals, principals, head coaches, supervisors, directors, and assistant superintendents and that the names of the candidates for these positions, as vacancies occur, be submitted to Board members at least one week in advance of the board meeting."

This policy has not been rescinded.

Affiant submits the following statistics relating to the white-black ratio of staff, coaches, teachers and students for the school years 1972-73 and 1973-74.

	1972-73		*1973-74*	
	White	*Black*	*White*	*Black*
Senior High Principals	7	3	6	4
Senior High Assistant Principals	9	8	10	10
Junior High Principals	9	3	7	5
Junior High Assistant Principals	8	3	6	5
Elementary Principals	36	17	28	19
Senior High Head Coaches	6	4	5	5
Classroom Teachers K-12	1,523	1,024	1,268	936
Students K-12	25,591	25,682	24,117	25,377

Affiant further shows that following the Court Order of July 20, 1973, to date, the total appointments of staff, principals, coaches and teachers are as follows:

	Total	*Black*	*White*
One Year appointments	4	2	2
New Appointees beginning August 1, 1973	36	27	9

/s/Earl A. McKenzie
Superintendent, Caddo Parish Schools, and Secretary, Caddo Parish School Board

SWORN TO AND SUBSCRIBED before me, Notary, on this 25th day of June, 1974.

/S/Mary G. Kellogg
Notary Public